

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

TOBIN DON LEMMONS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-06-354-L
	)	
RON WARD,	)	
	)	
Respondent.	)	

**ORDER**

Petitioner, a state prisoner appearing *pro se*, filed this habeas corpus action pursuant to 28 U.S.C. § 2241 challenging a prison disciplinary conviction and seeking the restoration of earned credits. This matter is before the court for review of the Report and Recommendation entered by United States Magistrate Judge Valerie K. Couch on August 9, 2006, wherein she recommended that the respondent's Motion to Dismiss [Doc. No. 11] be granted and the petition be dismissed.

Petitioner has filed an Objection to Report and Recommendation, which the court has carefully considered. However, the court finds that petitioner's objection fails to provide an adequate basis for overturning the conclusions of the Magistrate Judge in this case, which are well supported by the facts and controlling legal authorities. The Magistrate Judge properly found that the record demonstrates that petitioner failed to exhaust his administrative remedies. Alternatively, as stated by the Magistrate Judge, petitioner did not timely and

diligently pursue an administrative appeal of his misconduct conviction nor did he properly utilize the available procedures. Petitioner has not demonstrated that equitable tolling should apply nor has he demonstrated he has diligently pursued his claims.

Having conducted a *de novo* review of the matter, the court finds that the Report and Recommendation should be adopted in its entirety. **Accordingly, respondent's Motion to Dismiss [Doc. No. 11] is GRANTED as follows: The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 is DISMISSED due to petitioner's failure to exhaust administrative remedies and, alternatively, due to the expiration of the statute of limitations.**

It is so ordered this 16th day of August, 2006.

  
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TIM LEONARD  
United States District Judge